In the High Court for the States of Pun jab and Haryana at Chandigarh.

Crl. Rev No. 875 of 2007
Decided on May 17,2007.

Avtar Singh Petitioner

vs.

State of Punjab Respondent.

Present: Mr.Suvineet Sharma, Advocate,for the petitioner

Pritam Pal,J: (Oral)

This Criminal Revision by the accused/petitioner in a case under Section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act'), has been filed against impugned order dated May 11,2007, whereby an application filed by the prosecution under Section 311 of Cr.P.C, for recalling two formal witnesses i.e Constable Vijay Kumar and Head Constable Sukhwinder Singh, who had filed their respective affidavits before the trial Court, was allowed.

Without going into any further details, suffice it to say that the aforesaid two police witnesses had tendered into evidence their respective affidavits to prove link evidence. At the last stage of the trial, it was revealed that due to inadvertence, Constable Vijay Kumar had signed the affidavit of Head Constable Sukhwinder Singh and similarly, Head

Constable Sukhwinder Singh had signed the affidavit of Constable Vijay Kumar, so, they were allowed to be re-examined in order to rectify/clarify that mistake. Admittedly, both the affidavits were got attested from the Judicial Magistrate Ist Class on the same day and at one and the same time.

Now contention of learned counsel for the petitioner is that in fact, the impugned order of recalling the aforesaid two witnesses is just to fill up the lacunae left in the prosecution case, which cannot be allowed after closure of the prosecution case. In support of his arguments, learned counsel has relied upon Sajeendran v. Thalakulathoor Grama Panchayath 2004 (1) All Indian Criminal Law Reporter 854.

I have given my thoughtful consideration to the aforesaid points raised by learned counsel for the petitioner and have also gone through the case law cited and find no merit in the aforesaid contention inasmuch as it is observed by the learned trial Court that the aforesaid mistake had occurred due to inadvertence of the aforesaid two formal witnesses of the prosecution. Moreover, in the facts of this case, it can be safely inferred that the said mistake of signing the affidavits in the manner is bonafide and rectification of the same is essential for just decision of the case. Besides that, the learned trial Court has relied upon a case law of the Hon'ble Apex Court reported as Rajendra Prasad v. Narcotic Cell through its Officer-in-charge, Delhi, 1999(3) Recent Criminal Reports, 440, wherein the Hon'ble Supreme Court had found the allowing of re-examination of certain witnesses justified at the time when the such mistake was detected even during the course of hearing of arguments. The case law cited by learned counsel for the petitioner is

of the Hon'ble Kerala High Court , wherein His Lordship held that application u/s 311 of Cr.P.C, should not have been allowed after the trial was terminated and the case was posted for judgment. But herein the instant case, the case was never posted for judgment, rather it is apparent from the file that the aforesaid two witnesses have already been re-examined and when they were to be cross examined by the learned counsel for the accused/petitioner, the case was got adjourned on the request of learned defence counsel. All this goes a long way to show that the accused/petitioner is, in fact, bent upon to delay the proceedings of the prosecution case , which is pending since November 17,2001. Adjudging from any angle, no interference is called for in the impugned order. Hence, this Criminal Revision is hereby dismissed in limine.

May 17,2007 (Pritam Pal)
RR Judge